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1 CHERYL SMOUT
Environmental Enforcement Section
2 Environment and Natural Resources Division
U.S. Department of Justice
3 P.O. Box 7611
Washington, DC 20044-7611
4 Tel. (202) 514-5466
Fax (202) 514.2583
5 Virginia State Bar # 26331
email: cheryl.smout@usdoj.gov

6 MELINDA HAAG
7 United States Attorney
JOANN SWANSON
8 Chief, Civil Division
Office of United States Attorney
9 450 Golden Gate Ave.
11th Floor
10 San Francisco, CA 94102
Tel. (415) 436-7200

11 J. TOM BOER
12 Barg, Coffin Lewis & Trapp
350 California Street, 22d Floor
13 San Francisco, CA 94104-1435
Tel. (415) 228-5400
14 E-mail jtb@bcltlaw.com

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COPY

15 IN THE UNITED STATES DISTRICT COURT
16 FOR THE NORTHERN DISTRICT OF CALIFORNIA

17 UNITED STATES OF
18 AMERICA,

19 Plaintiffs,

20 v.

21 COLUMBUS
MANUFACTURING, INC.

22 Defendant

DMH

CV12 0471
CIVIL ACTION NO. _____

COMPLAINT

23
24 The United States of America, by authority of the Attorney General of
25 the United States and through the undersigned attorneys, acting at the request
26 of the Administrator of the United States Environmental Protection Agency
27 (hereafter "U.S. EPA" or "EPA"), files this complaint and alleges as follows:
28

1 **NATURE OF THE ACTION**

2 1. This is a civil action for penalties and injunctive relief against
3 Columbus Manufacturing, Inc. (“Defendant”) for violations of Section
4 112(r)(1) and 112(r)(7) of the Clean Air Act, 42 U.S.C. §§ 7412(r)(1) and
5 7412(r)(7), Section 103 of the Comprehensive Environmental Response,
6 Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9603, and/or
7 Sections 304 and 312 of the Emergency Preparedness and Community Right-
8 To-Know Act (“EPCRA”), 42 U.S.C. §§ 11004 and 11022, at Defendant’s
9 two meat processing facilities located in South San Francisco and Hayward,
10 California.

11 **JURISDICTION AND VENUE**

12 2. This Court has jurisdiction over the subject matter of this action,
13 and the Defendants, pursuant to Section 113(b) of the CAA, 42 U.S.C.
14 § 7413(b), Section 109(c) of CERCLA, 42 U.S.C. § 9609(c), Section
15 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3) and under 28 U.S.C. §§ 1331,
16 1345 and 1355.

17 3. Venue is proper in this District under Section 113(b) of the Clean
18 Air Act, 42 U.S.C. § 7413(b), Section 109(c) of CERCLA, 42 U.S.C. § 9609
19 (c), Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3) and 28 U.S.C.
20 §§ 1391(b) and (c) and 1395(a), because the Defendant does business in,
21 and these claims arose within, this judicial district.

22 4. Notice of commencement of this action has been given to the State
23 of California pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C.
24 § 7413(b).

25 **PARTIES**

26 6. Plaintiff is the United States of America, acting at the request of
27 the EPA, an agency of the United States.

28 7. Defendant is a corporation organized under the laws of the State
of California, and is doing business in this judicial district.

GENERAL ALLEGATIONS

1
2 8. At all relevant times Defendant owned and operated a meat
3 processing facility in South San Francisco at 493 Forbes Boulevard, San
4 Mateo County, ("Forbes Facility") and in Hayward at 3190 Corporate Place,
5 Alameda County, California ("Hayward Facility")(Jointly referred to as "the
6 Facilities").

7 9. At all relevant times Defendant maintained refrigeration systems at
8 both of the Facilities and those systems utilized anhydrous ammonia.

9 10. On February 17, 2009, the Forbes Facility experienced a 217
10 pound release of anhydrous ammonia from its ammonia refrigeration system.
11 The release was caused by corroded copper/brass fittings connecting stainless
12 steel tubing to a pressure control switch.

13 11. After the February 2009 release, Defendant relocated significant
14 portions of its ammonia refrigeration system to the roof from the inside of the
15 Forbes Facility. During this project, Defendant failed to properly label
16 certain piping and did not undertake a management of change analysis
17 ("MOC") or conduct a pre-startup safety review ("PSSR") prior to the
18 introduction of anhydrous ammonia into the relocated components.

19 12. On August 28, 2009, Defendant experienced a second accidental
20 release of anhydrous ammonia from the roof of its Forbes Facility. At least
21 200 pounds of anhydrous ammonia were released after a hydrostatic pressure
22 buildup in a valve group ("Valve Group #19") caused the failure of an access
23 flange of the strainer at the inlet to the evaporator pressure regulator. This
24 failure was caused by a design flaw in the valve group configuration. The
25 strainer should have been placed in parallel with the adjacent component but
26 instead was placed in a series configuration.

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1 13. After the anhydrous ammonia was released through the access
2 flange of the strainer on Valve Group #19, a contractor of Defendant applied
3 water to the liquid ammonia in an attempt to mitigate the release. However,
4 this had the effect of exacerbating and increasing the vapor cloud released to
5 the atmosphere.

6 14. The gaseous cloud of anhydrous ammonia traveled from the
7 Forbes Facility to the adjacent buildings owned by Genentech, Inc. At least
8 seventeen Genentech employees were sent to local hospitals or clinics. One
9 of those employees was trapped in the ammonia vapor cloud as he was
10 warming up the engine of a Genentech bus prior to starting his morning
11 round of employee commuter pickups. The bus driver remained hospitalized
12 for four days to treat his injuries.

13 15. The releases of anhydrous ammonia from the Forbes Facility on
14 February 17, 2009 and August 28, 2009 were both above the reportable
15 quantity of 100 pounds pursuant to 40. C.F.R. § 302.4. Yet, Defendant failed
16 in both instances to notify the National Response Center ("NRC"), or the
17 State Emergency Response Committee ("SERC") for over 5 hours.

18 **FIRST CLAIM FOR RELIEF**
19 **SECTION 112(r)(1) OF THE CLEAN AIR ACT**

20 16. Paragraphs 1-15 are incorporated herein by reference.

21 17. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), mandates
22 three distinct general duty of care requirements for owners and operators of
23 stationary sources producing, processing, handling or storing specific
24 hazardous substances, including extremely hazardous substances. In
25 pertinent part, Section 112(r)(1) of the CAA provides as follows:

26 It shall be the objective of the regulations and programs
27 authorized under this subsection to prevent the accidental release and
28 to minimize the consequences of any such release of any substance
listed pursuant to paragraph (3) or any other extremely hazardous

1 substance. The owners and operators of stationary sources producing,
2 processing, handling or storing such substances have a general duty in
3 the same manner and to the same extent as Section 654 of Title 29 [29
4 U.S.C. § 654)] to identify hazards which may result from such releases
5 using appropriate hazard assessment techniques, to design and
6 maintain a safe facility taking such steps as are necessary to prevent
7 releases, and to minimize the consequences of accidental releases
8 which do occur.

9 18. Anhydrous ammonia is a listed extremely hazardous substance
10 under Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3) and 40 C.F.R.
11 § 68.130.

12 19. The Forbes Facility is a stationary source. "Stationary source"
13 means, in relevant part, "any buildings, structures, equipment, installations or
14 substance emitting stationary activities...from which an accidental release
15 may occur." Section 112(r)(2)(C), 42 U.S.C. § 7412(r)(2)(C).

16 20. Defendant is an owner and operator of the Forbes Facility which
17 handles, stores, and uses anhydrous ammonia.

18 21. Defendant failed in its general duty of care to identify hazards
19 which may result from an accidental release of anhydrous ammonia in that
20 when it moved the refrigeration system to the roof of the Forbes Facility it
21 failed to perform a MOC analysis or a PSSR. Both a MOC analysis and a
22 PSSR are the industry standard for identifying hazards in a refrigeration
23 process which has been reconfigured. If Defendant had undergone a MOC
24 analysis or PSSR, it would have identified the design flaw of placing the
25 strainer in a series configuration, and could have avoided the August 2009
26 release.

27 22. Defendant failed in its general duty to design and maintain a safe
28 facility when it failed to use proper materials in its ammonia refrigeration
system at the Forbes Facility. The February 2009 ammonia release was
caused by the use of incompatible materials, namely copper and/or brass in

1 piping that is in direct contact with ammonia. This is contrary to the industry
2 standard because copper corrodes in the presence of ammonia.

3 23. Defendant failed in its general duty of care to minimize the
4 consequences of the accidental release of anhydrous ammonia which
5 occurred on August 28, 2009, in that Defendant's contractor applied water to
6 the released liquid ammonia, thereby exacerbating the release and creating
7 harm to the public. Moreover, Defendant failed to inform its neighbors,
8 including Genentech, Inc., of the release. The only list of notification
9 contacts Defendant had at the Forbes Facility was inaccessible during the
10 release and the telephone number Defendant had for Genentech, Inc. was
11 incorrect. Finally, Defendant had no audible or visual alarm system outside
12 of the building to warn people when the release occurred.

13 24. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), as amended by
14 28 U.S.C. § 2461 and 31 U.S.C. § 3701, provides that the Administrator of
15 EPA shall, in the case of a person which is the owner or operator of a major
16 stationary source, and may, in the case of any other person, whenever such
17 person violates any requirement or prohibition of Subchapter I of the Act
18 (42 U.S.C. §§ 7401-7515), commence a civil action for injunctive relief and
19 to assess and recover a civil penalty of up to \$27,500 per day for each such
20 violation.

21 25. Under the Federal Civil Penalties Inflation Adjustment Act of
22 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvements
23 Act of 1996 ("DCIA"), 31 U.S.C. § 3701, and pursuant to EPA's Civil
24 Monetary Penalty Inflation Adjustment Rule ("Inflation Adjustment Rule"),
25 69 *Fed. Reg.* 7,121 (Feb. 13, 2004) and 40 C.F.R. Part 19, 73 *Fed. Reg.*
26 75,340 (Dec. 11, 2008), promulgated pursuant the DCIA, Defendant is liable
27 for assessment of a civil penalty of up to \$27,500 per day for each violation

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1 that occurred on or after January 31, 1997 through March 15, 2004, up to
2 \$32,500 per day for each violation that occurred after March 15, 2004
3 through January 12, 2009, and up to \$37,500 per day for each violation that
4 occurred after January 12, 2009.

5 26. The defendant violated the general duty of care under Section
6 112(r)(1) of the CAA every day it operated its refrigeration system with
7 incompatible materials, or without conducting any form of hazard
8 identification or without adequately responding to a catastrophic release.

9 **SECOND CLAIM FOR RELIEF**
10 **SECTION 103 OF CERCLA**

11 27. Paragraphs 1-15 are incorporated herein by reference.

12 28. Section 103 of CERCLA requires any person in charge of a
13 facility "as soon as he has knowledge of any release. . . of a hazardous
14 substance in quantities equal to or greater than those determined pursuant to
15 [section 102 of CERCLA] to immediately notify the National Response
16 Center." 42. U.S.C. § 9603(a).

17 29. Anhydrous ammonia is a listed hazardous substance with a
18 reportable quantity ("RQ") of 100 pounds. 40 C.F.R. § 302.4.

19 30. The February 17, 2009 release of 217 pounds of anhydrous
20 ammonia was a reportable release under Section 103 of CERCLA. However,
21 Defendant did not notify the NRC of this release for over 5 hours.

22 31. The August 28, 2009 release of approximately 200 pounds of
23 anhydrous ammonia was a reportable release under Section 103 of CERCLA.
24 However, again, Defendant did not notify the NRC of this release for over
25 10 hours.

1 32. Section 109(c) of CERCLA provides as follows:

2 The President may bring an action in the United States district
3 court for the appropriate district to assess and collect a penalty of not
4 more than \$25,000 per day for each day during which the violation (or
5 failure or refusal) continues in the case of . . . (1) A violation of the
6 notice requirements of section 9603(a) of this title In the case of a
7 second or subsequent violation (or failure or refusal), the amount of
8 such penalty may be not more than \$75,000 for each day during which
9 the violation (or failure or refusal) continues.
10 42 U.S.C. § 9606(c).

11 33. Under the DCIA and the Inflation Adjustment Rule, the \$25,000
12 per day penalty has been increased to \$37,500 per day, and the \$75,000 per
13 day penalty for subsequent violations has been increased to \$107,500 per day
14 under Section 109(c) of CERCLA as of January 2009.

15 34. Defendant is liable for a penalty of \$37,500 for its failure to
16 timely notify the NRC on February 17, 2009, and is liable for a penalty of
17 \$107,500 for its failure to timely notify the NRC on August 28, 2009, of
18 releases of hazardous substances above the reportable quantity.

19 **THIRD CLAIM FOR RELIEF**
20 **SECTION 304 OF EPCRA**

21 35. Paragraphs 1-15 are incorporated herein by reference.

22 36. Section 304 of EPCRA requires the owner or operator of a facility
23 where hazardous chemicals are produced, used, or stored to immediately
24 provide the Local Emergency Planning Committee ("LEPC") and State
25 Emergency Response Committee ("SERC") with notice of releases of
26 CERCLA hazardous substances or extremely hazardous substances in excess
27 of reportable quantities.

28 37. Anhydrous ammonia is listed as an extremely hazardous
substance under EPCRA with an RQ of 100 pounds. 40 C.F.R. Part 355,
Appendices A and B.

1 38. The February 17, 2009 release of 217 pounds of anhydrous
2 ammonia was a reportable release under Section 304 of EPCRA. However,
3 Defendant did not notify the California Emergency Management Agency, the
4 SERC, of this release for over 5 hours.

5 39. The August 28, 2009 release of approximately 200 pounds of
6 anhydrous ammonia was a reportable release under Section 304 of EPCRA.
7 However, again, Defendant did not notify the SERC of this release for
8 approximately 7 hours.

9 40. Section 325(b)(3) of EPCRA provides as follows:

10 The Administrator may bring an action in the United States District
11 court for the appropriate district to assess and collect a penalty of not
12 more than \$25,000 per day for each day during which the violation
13 continues in the case of a violation of the requirements of section
14 11004 of this title. In the case of a second or subsequent violation, the
15 amount of such penalty may be not more than \$75,000.

16 42 U.S.C § 11045(b)(3).

17 41. Under the DCIA and the Inflation Adjustment Rule the \$25,000
18 per day penalty has been increased to \$37,500 per day, and the \$75,000 per
19 day penalty for subsequent violations has been increased to \$107,500 per day
20 under Section 325(b)(3) of EPCRA as of January 2009.

21 42. Defendant is liable for a penalty of \$37,500 for its failure to timely
22 notify the SERC on February 17, 2009, and is liable for a penalty of \$107,500
23 for its failure to timely notify the SERC on August 28, 2009, of releases of
24 hazardous substances above the reportable quantity.

25 **FOURTH CLAIM FOR RELIEF**
26 **SECTION 112(r)(7) OF THE CLEAN AIR ACT**

27 43. Paragraphs 1-9 are incorporated herein by reference.

28 44. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7) requires
owners and operators of stationary sources which use hazardous substances
above the regulatory threshold amounts to develop and file a Risk

1 Management Plan ("RMP") with EPA. The owner or operator of a stationary
2 source must submit an initial RMP by the date on which a regulated
3 substance is first present at the facility above the threshold quantity in a
4 process. 40 C.F.R. § 68.150(b)(3).

5 45. The Hayward Facility is a stationary source. "Stationary source"
6 means, in relevant part, "any buildings, structures, equipment, installations or
7 substance emitting stationary activities...from which an accidental release
8 may occur." Section 112(r)(2)(C), 42 U.S.C. § 7412(r)(2)(C).

9 46. Defendant is an owner and operator of the Hayward Facility which
10 handles, stores, and uses anhydrous ammonia.

11 47. Anhydrous ammonia is among the listed hazardous substances in
12 40 C.F.R. Part 150, with a regulatory threshold amount of 10,000 pounds.

13 48. Defendant acquired the Hayward Facility in March 2007 and shut
14 down the refrigeration system, removing all ammonia. Defendant initially
15 restarted the system in June 2007 with a charge of approximately 8,000
16 pounds of ammonia. Defendant added 3,000 pounds of ammonia in
17 November 2007, bringing the total charge to 11,000 pounds, but did not
18 submit its initial RMP for the Hayward Facility until October 2008, at least
19 11 months late.

20 49. The implementing regulations for Section 112(r)(7) of the CAA,
21 42 U.S.C. § 7412(r)(7), require the owner or operator of a stationary source to
22 perform a process hazards analysis ("PHA") to identify, evaluate and control
23 the hazards involved in the facility processes. The owner or operator must
24 also establish a system to promptly address the findings and recommendations
25 of the PHA. 40 C.F.R. § 68.67(e).

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1 50. The Defendant had completed a PHA in May of 2007, but as of the
2 April 2010 EPA inspection, Defendant had failed to establish an adequate
3 system to promptly address the twenty recommendations from the May 2007
4 PHA. Some of those recommendations included labeling of piping, updating
5 emergency procedures, retrofitting pipe and tank connections, documenting
6 training, and developing a system to detect ammonia releases on the roof from
7 the operation of compressor relief valves.

8 51. The implementing regulations for Section 112(r)(7) of the CAA,
9 42 U.S.C. § 7412(r)(7), require the owner or operator of a stationary source to
10 develop and implement written operating procedures that provide instructions
11 or steps for conducting activities associated with a covered process.
12 40 C.F.R. § 68.68.

13 52. As of the April 2010 EPA inspection, Defendant's written
14 operating procedures failed to provide clear instructions for the safe operation
15 of the refrigeration system. Moreover, the existing written operating
16 instructions were not readily accessible to employees because the
17 refrigeration contractor maintained these documents offsite.

18 53. The implementing regulations for Section 112(r)(7) of the CAA,
19 42 U.S.C. § 7412(r)(7), require the owner or operator of a stationary source to
20 establish and implement written procedures to maintain the ongoing integrity
21 of the process equipment. 40 C.F.R. § 68.73(b).

22 54. As of the April 2010 EPA inspection, Defendant had no written
23 mechanical integrity procedures, having relied on its refrigeration contractor
24 to conduct all mechanical integrity activities.

25 55. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), as amended by
26 28 U.S.C. § 2461 and 31 U.S.C. § 3701, provides that the Administrator of
27 EPA shall, in the case of a person which is the owner or operator of a major
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1 stationary source, and may, in the case of any other person, whenever such
2 person violates any requirement or prohibition of Subchapter I of the Act
3 (42 U.S.C. §§ 7401-7515), commence a civil action for injunctive relief and
4 to assess and recover a civil penalty of up to \$27,500 per day for each such
5 violation.

6 56. Under the DCIA and the Inflation Adjustment Rule, Defendant is
7 liable for assessment of a civil penalty of up to \$27,500 per day for each
8 violation that occurred on or after January 31, 1997 through March 15, 2004,
9 up to \$32,500 per day for each violation that occurred after March 15, 2004
10 through January 12, 2009, and up to \$37,500 per day for each violation that
11 occurred after January 12, 2009.

12 57. The defendant violated Section 112(r)(7) of the CAA, 42 U.S.C.
13 § 7412(r)(7), every day it failed to have an RMP in place; every day that it
14 was without an adequate system to promptly address the twenty
15 recommendations from the May 2007 PHA; every day that it failed to have
16 on-site clear written instructions for the safe operation of the refrigeration
17 system; and every day that it failed to have on-site written mechanical
18 integrity procedures.

19 **FIFTH CLAIM FOR RELIEF**
20 **SECTION 312 OF EPCRA**

21 58. Paragraphs 1-9 are incorporated herein by reference.

22 59. Section 312 of EPCRA requires that the owner or operator of a
23 regulated facility annually submit completed hazardous chemical inventory
24 forms to the SERC, the LEPC and the fire department with jurisdiction over
25 the facility if the amount of a hazardous chemical exceeds a minimum
26 threshold level. The report is due by March 1 each year. 40 C.F.R. Part 370.
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1 60. The hazardous chemical inventory forms must contain information
2 on the hazardous chemical including: the name, the estimated maximum
3 amount, the estimated average daily amount, the manner of storage, the
4 chemical location at the facility, and whether the owner elects to withhold the
5 information from public disclosure ("Tier II Information").

6 61. The minimum threshold level for an extremely hazardous
7 substance is equal to the Threshold Planning Quantity ("TPQ") listed in
8 40 C.F.R. Part 355, Appendices A & B.

9 62. When Defendant restarted the Hayward Facility in June 2007, it
10 was storing approximately 8,000 pounds of anhydrous ammonia and it
11 continued to store at least that amount into 2008.

12 63. Anhydrous ammonia is a listed extremely hazardous substance
13 with a TPQ of 100 pounds. 40 CFR Part 355, Appendices A & B.

14 64. Defendant did not submit any Tier II Information to the San Mateo
15 County Department of Environmental Health, the LEPC, for the calendar
16 years 2007 and 2008.

17 65. Section 325(b)(3) of EPCRA provides as follows:

18 The Administrator may bring an action in the United States District
19 court for the appropriate district to assess and collect a penalty of not
20 more than \$25,000 per day for each day during which the violation
continues in the case of a violation of the requirements of section
11004 of this title.

21 42 U.S.C § 11045(b)(3).

22 66. Under the DCIA and the Inflation Adjustment Rule the \$25,000
23 per day penalty under Section 325(b)(3) of EPCRA has been increased to up
24 to \$32,500 per day for each violation that occurred after March 15, 2004
25 through January 12, 2009, and up to \$37,500 per day for each violation that
26 occurred after January 12, 2009.

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1 67. Defendant is liable for a penalty of up to \$32,500 per day from
2 June 2007 through January 12, 2009, and is liable for a penalty of up to
3 \$37,500 per day for each day after January 12, 2009, that it failed to provide
4 the LEPC with the Tier II Information in hazardous chemical inventory forms
5 for the Hayward Facility.

6 **RELIEF SOUGHT**

7 WHEREFORE, Plaintiff, the United States, respectfully prays that this Court
8 provide the following relief:

9 1. Enjoin Defendant from operating the Forbes Facility or the
10 Hayward Facility, except in accordance with the Clean Air Act; with Section
11 103 of CERCLA; and with Sections 304 and 312 of EPCRA, and with
12 implementing regulations under each statute;

13 2. Order Defendant to pay a civil penalty for each day of each
14 violation of the Clean Air Act and the applicable regulations at both the
15 Forbes Facility and the Hayward Facility of \$27,500 per day for each
16 violation that occurred on or after January 31, 1997 through March 15, 2004,
17 \$32,500 per day for each violation that occurred after March 15, 2004
18 through January 12, 2009, and \$37,500 per day for each violation that
19 occurred after January 12, 2009;

20 3. Order Defendant to pay a civil penalty of \$37,500 for its failure
21 to timely notify the NRC on February 17, 2009 of a release; and to pay a civil
22 penalty of \$107,500 for its failure to timely notify the NRC on August 28,
23 2009 of a release, with both releases related to the Forbes Facility;

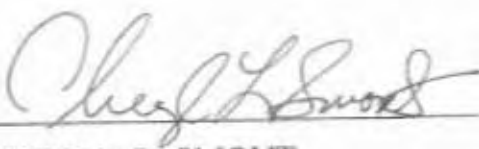
24 4. Order Defendant to pay a civil penalty of \$37,500 for its failure
25 to timely notify the SERC on February 17, 2009 of a release; and to pay a
26 civil penalty of \$107,500 for its failure to timely notify the SERC on August
27 28, 2009 of a release, with both releases related to the Forbes Facility;

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1 5. Order Defendant to pay a civil penalty of \$32,500 per day from
2 June 2007 through January 12, 2009, and a penalty of \$37,500 per day for
3 each day after January 12, 2009, that it failed to provide the LEPC with the
4 Tier II Information in hazardous chemical inventory forms for the Hayward
5 Facility.

6 6. Award the United States its costs of this action; and

7 7. Grant the United States such further relief as this Court may
8 deem just and proper.

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12 CHERYL L. SMOUT
13 Environmental Enforcement Section
14 Environment & Natural Resources
15 Division

15 Of Counsel:
16 Elizabeth A. Cox
17 EPA Region 9
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